

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Kevin Till,**  
Petitioner-Appellant,

v.

**Polk County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 09-77-1387**  
**Parcel No. 080/06501-001-000**

On November 18, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Kevin Till requested a hearing and submitted evidence in support of his petition. Till served as legal representative for the property owner. The Board of Review designated Assistant County Attorney Ralph E. Marasco, Jr. as its legal representative. It also submitted documentary evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Kevin Till, representative for the owner of property located at 1711 2nd Avenue, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing the property. According to the property record card, the subject property consists of a one-story, concrete-block warehouse building having 38,400 square feet of gross area, 7540 square feet of finished office area, 10,000 square foot of concrete paving, and chain-link fencing. The building was constructed in 1954 and has 50% physical depreciation. The subject property has a 4+00 quality grade, and is in normal condition. The improvements are situated on a 1.951 acre site in a neighborhood known as Central Place District in the northeast area of the city of Des Moines.

The real estate was classified as commercial on the initial assessment of January 1, 2009, and valued at \$846,000, representing \$143,000 in land value and \$703,000 in improvement value.

Till protested to the Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code 441.37(1)(b). The Board of Review granted the protest, in part, and reduced the assessment to \$712,000, representing \$143,000 in land value and \$407,000 in improvement value.

Till filed his appeal with this Board and claimed the grounds of over-assessment and that there had been a downward change in value under sections 441.21 and 441.35. Because the ground of downward change in values is akin to a market value claim in a re-assessment year, we consider only the claim of over-assessment in this appeal. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). He believes \$550,000 was the actual value and a fair assessment.

Kevin Till, comptroller of Iowa Machinery, testified he drove by all the comparable properties used by the Board of Review and they are located fairly close to the subject property. However, the subject property is the only one that flooded. Till says the property flooded in 1993 and the interior was completely ruined by three feet of flood water in the building. He reported the area was also evacuated by police because of a flooding threat in 2008, but the levee breached on the opposite side of the river instead and there was no damage to the property. Additionally, he reported the subject lot's use is further restricted by city covenants and the shape of the lot also makes it hard to use.

Tom Franklin, a real estate agent for Next Generation Realty and for Iowa Assessment Advisors, Urbandale, Iowa, testified on behalf of Till. In his opinion, the subject property is outdated and needs some repairs. He indicated that the property owner also owns the tenant company, Iowa Machinery. Iowa Machinery sublets a portion of the leased property.

Franklin completed a comparative market analysis based on three 2007 sales. He testified these properties were close in age and condition to the subject property, and located in the same general area of northeast Des Moines. He testified that all three properties sold for less than their assessed values. Franklin averaged the sale prices per-square-foot. Given the age/condition of the subject property and its location in a flood zone area, Franklin believes it is valued at \$550,000 based on the sales approach. He did not complete cost or income approaches to value.

In Franklin's opinion, age, location, and size were the key factors in selecting comparable sale properties. He testified the properties used by the assessor as comparables were newer, were in a different location, and were not in a flood zone making them less reliable.

The Board of Review questioned whether Franklin was a disinterested witness because of their fee arrangement with property owners. In response, Franklin testified the Iowa Assessment Advisors firm refunds all except \$50 of the fees charged if their analysis does not result in a reduction in assessment

Richard Deheer, an appraiser from Knoxville, Iowa, testified he was hired by Till as a consultant. He did not complete an appraisal on the subject property, but consulted in the selection of comparable properties to use. He testified suitable sales data was scarce, and he could not find any comparable property sales in a flood plain. Deheer developed a list of potential properties and worked with Franklin to narrow the list to five sales. Franklin selected the three he actually used. Deheer believes that location is the first consideration in selecting properties for comparison. In his opinion, flooding also needs to be considered because of the significant implications for lender financing. Deheer reviewed the assessor's income approach and was unable to determine the source of the 8.75% capitalization rate used and questioned the gross income estimate. He believes this rate is less than the 11% to 14% return desired by investors and would make the property unattractive for investment purposes. In his opinion, the market drives value more than income.



Pat Harmeyer, a commercial appraiser from the assessor's office, testified on behalf of the Board of Review. He reported a county-wide revaluation of all commercial property in 2009 to correct an 80% sales ratio. He indicated the revaluation process was based on the cost approach and adjusted for the market. Harmeyer looked at warehouse and service repair properties in different areas of the county and specifically those in the Central Place District. He testified the sales ratios in this district were even lower than the county-wide ratio meaning generally properties were selling for more than their assessed values. Harmeyer developed all three approaches to valuation. He believed the cost approach yielded an inaccurate value, which was too high. He acknowledged that two of the three comparable properties he used were not in the flood area, but the property at 1221 Illinois was sold for \$23.28 per square foot.

Harmeyer testified he developed the income approach using triple net market rent of \$2.50 per square foot. He said the rent was based on confidential information obtained on similar properties. The market rent data was not limited to the flood area and no adjustments for property age or condition were made. The 19% vacancy factor he used lowered the rent to \$2.02 per square foot. He was unaware that actual rent on a sublet portion of the subject property was \$1.41 per square foot. Harmeyer reported he used five or six flood zone listings to obtain his rent estimate. He reported the 9.62% capitalization rate was obtained by county-wide warehouse sales and surveys, although no documentation was submitted to support the capitalization rate or the rents.

Till offered historical information on the subject property and factors such as flood risk, lot shape and city covenants, which he believed reduce the value of the property. But he did not provide any data to support these assumptions. Because of this, we find his evidence insufficient to prove over-assessment. Franklin provided comparative sales data using properties he believes to be similar in age, location, and size. While his pre-selection likely reduced the need for adjustments based on these factors; his analysis lacked any adjustments for differences between those properties and the

subject property. For this reason, we find his analysis and testimony do not provide sufficient evidence to prove a claim of over-assessment. Harmeyer developed all three approaches to value. Although his sales approach included two properties in non-flood area, he made reasonable adjustments for dissimilarities between the comparables properties and the subject property. We are reluctant to rely on this income approach because no documentation was provided to support market rent or capitalization rate used. We agree with Harmeyer the cost approach was unreliable and produced an inaccurate valuation. We find Harmeyer provided the most reliable evidence and it supported the assessment.

Reviewing all the evidence, we find the preponderance of the evidence is lacking to support Till's claim of over-assessment. Although testimony suggested reduced property value related to the subject property's flood zone location, insufficient evidence was presented to establish its fair market value either by sales comparison or income approach valuation.

### *Conclusion of Law*

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment*

*Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). We find Till failed to provide sufficient proof that the subject property is over-assessed as of January 1, 2009.

Viewing the evidence as a whole, we determine Till has failed to prove by a preponderance of the evidence the subject property was assessed for more than authorized by law as of January 1, 2009. Therefore, we affirm the property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$712,000, representing \$143,000 in land value and \$407,000 in improvement value.



THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Polk County Board of Review is affirmed.

Dated this 23 day of December 2010.

Jacqueline Rypma  
Jacqueline Rypma, Presiding Officer

Karen Oberman  
Karen Oberman, Board Chair

Richard Stradley  
Richard Stradley, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>12-23</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>